

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** A zoning text amendment that merely lists other existing development standards that may or may not apply to needed housing on their own terms cannot be challenged on the basis that the unamended development standards may include subjective or unclear standards applicable to needed housing, in violation of ORS 197.307(4) and Goal 10. If the existing unamended development standards violate ORS 197.307(4), such violations can be challenged only in an appeal of a decision that adopts, amends or applies those standards. *Shamrock Homes LLC v. City of Springfield*, 68 Or LUBA 1 (2013).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Where a zoning amendment standard requires that the city shall consider the comprehensive plan, and the city’s transportation system plan proposes a pedestrian crossing near the rezoned property that the applicant’s traffic engineer testified may require changes to the proposed development, but the findings do not address the issue, remand is necessary for the city to consider the issue or explain why no such consideration is warranted under the zoning amendment standard. *Save Downtown Canby v. City of Canby*, 67 Or LUBA 385 (2013).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Where a local government adopts a new zone in one legislative decision and then applies that new zone to property in a separate legislative decision, which is then appealed to LUBA, a challenge that the new zone is contrary to the statewide planning goals may be precluded by acknowledgment of the first decision. However, acknowledgment does not insulate the new zone from a facial challenge on statutory or constitutional grounds, advanced in the appeal of the second legislative decision that for the first time applies the new zone to specific properties. *Barnes v. City of Hillsboro*, 61 Or LUBA 375 (2010).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Zoning text amendments intended to permit a majority of lands zoned for recreational commercial uses to be used for residential development unrelated to recreational commercial uses are inconsistent with comprehensive plan policies that impose on the city an affirmative obligation to support development of the zone with recreational commercial uses. *Sorensen v. City of Creswell*, 54 Or LUBA 468 (2007).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Absent some authority to the contrary, the uses allowed within a Public Parks zone or a Public Amusement zone are not limited to “recreational” or “public amusement” uses. *Cox v. Polk County*, 49 Or LUBA 78 (2005).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** A finding that allowing dog control facilities on public property in several public use zones will save public money is sufficient to explain why a legislative text amendment is in the “public interest.” *Cox v. Polk County*, 49 Or LUBA 78 (2005).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Where a development code includes a requirement that its standards for subdivision approval

must “provide safe \* \* \* traffic conditions,” findings that explain how an amended development code subdivision approval standard will make the transportation system safer are adequate to demonstrate compliance with that development code requirement notwithstanding that alternative subdivision approval standards might result in safer traffic conditions or achieve those safer traffic conditions more quickly. *Doob v. City of Grants Pass*, 48 Or LUBA 587 (2005).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** A zoning code amendment that purports to legalize lots or parcels that were created by deed or land sales contract in violation of the applicable local criteria at the time of creation is inconsistent with ORS 92.010 and ORS 215.010(1). *Stevens v. Jackson County*, 47 Or LUBA 381 (2004).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Oregon Laws 1993, chapter 590, section 6 allows counties to avoid implementing statutory changes to the destination resort requirements until no later than their next periodic review. Even if a county has not concluded its next periodic review, it cannot substantially amend its pre-1993 destination resort regulations without implementing those changes. *Stevens v. Jackson County*, 47 Or LUBA 381 (2004).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Given the ubiquity of land use regulations governing contemporary zoning decisions, it is doubtful whether the “spot zoning” standard described in *Smith v. Washington County*, 241 Or 380, 406 P2d 545 (1965), continues to have independent applicability. Whether a rezoning decision constitutes arbitrary or spot zoning depends on whether the decision is made in derogation of established criteria or made without criteria. *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Because a local rule establishing a one-year expiration period for permits is not a “land use regulation,” the fact that the rule was not adopted in accordance with the procedural requirements or ORS 197.610 through 197.625 has no bearing on its effectiveness. *Rest Haven Memorial Park v. City of Eugene*, 44 Or LUBA 231 (2003).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** LUBA may not overlook the fact that a new land use regulation is facially noncompliant with a Metro standard that the regulation is intended to implement, simply because the regulation requires compliance with unspecified standards of a sewerage agency that allegedly comply with the Metro standard. Even if the sewerage agency standards comply with the Metro standard, it is questionable whether the city may adopt noncompliant regulations and rely on a separate local government or agency to ensure compliance with the Metro standard. *Stallkamp v. City of King City*, 43 Or LUBA 333 (2002).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Where a city adopts a comprehensive update to its zoning code in an effort to comply with the ORS 197.307(6) requirement that standards applied to needed housing statutes be “clear

and objective,” and in so doing carries forward preexisting standards that are not clear and objective, such standards are subject to review under ORS 197.307(6), and such review does not constitute an impermissible collateral attack on those standards. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 370 (2002).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** A code amendment that grants discretionary authority for city staff to impose conditions on approval of needed housing may constitute or contain “standards” or “procedures for approval” that must, under ORS 197.307(6), be clear and objective. Such standards are subject to review in an appeal of the city’s legislative decision adopting the amendment. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 370 (2002).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** The ORS 92.285 prohibition against adopting retroactive ordinances includes ordinances that allow retroactive application. *Church v. Grant County*, 37 Or LUBA 646 (2000).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** A legislative amendment that changes mobile home parks from a conditional use to a use in a floating zone which has not been applied to any particular site conflicts with ORS 197.480(1) and (2), which require that the city zone specific lands for mobile home parks, commensurate with the need for such parks. *Creswell Court v. City of Creswell*, 35 Or LUBA 234 (1998).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Requiring an applicant to prove a need for a mobile home park in addition to applying for a rezoning and site review for an allowed use violates ORS 197.480(1) and the ORS 197.307(6) requirement for clear and objective standards. *Creswell Court v. City of Creswell*, 35 Or LUBA 234 (1998).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Where ORS 197.435 requires that the county locate and exclude all high value crop areas from a destination resort zone overlay and the county’s analysis of the high value crop areas is limited to farms that actually demonstrated the ability to grow high value crops, rather than those capable of producing them, the county’s analysis is inconsistent with Goal 8 and the statute. *Boyer v. Baker County*, 35 Or LUBA 223 (1998).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** The statutory order of operations for confirming that a destination resort overlay amendment meets the requirements of Goal 8 and ORS 197.435(2) is to first map the concentrations of commercial farms and then determine which farms could produce the requisite \$1,000 per-acre per-year yield. *Boyer v. Baker County*, 35 Or LUBA 223 (1998).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** A land development ordinance amendment adopting a half-acre minimum lot size for a flood hazard zone is not reviewable for compliance with Goal 5 where the acknowledged comprehensive plan calls for a half-acre minimum in the flood hazard zone. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** The ORS 215.110(6) prohibition against retroactive land use regulations does not prohibit amending land use regulations to legalize uses that were constructed illegally. *Femling v. Coos County*, 34 Or LUBA 328 (1998).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Where a post-acknowledgment code amendment adds a certain type of use to the uses allowed in a particular zone, comprehensive plan provisions which do not refer to that type of use and could be consistent with a number of different code amendments are not "specific" policies providing the basis for the code amendment, as referred to in ORS 197.835(5)(b). *Melton v. City of Cottage Grove*, 28 Or LUBA 1 (1994).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Regardless of whether one or more of its zoning districts already allow a particular use, a local government may choose to amend its zoning ordinance to allow that use in another zoning district, so long as it complies with applicable legal standards in doing so. *Melton v. City of Cottage Grove*, 28 Or LUBA 1 (1994).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Under OAR 660-06-003(1)(d), (2)(d) and (3) and the "Applicability Matrix" of OAR 660-06-003(5), the Goal 4 rule applies to virtually all land use regulation amendments. *DLCD v. Columbia County*, 24 Or LUBA 32 (1992).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Amending an acknowledged comprehensive plan and land use regulations to establish a process for case-by-case application of the Goal 5 planning process in conjunction with individual development requests does not comply with Goal 5 and the Goal 5 administrative rule. *Ramsey v. City of Portland*, 23 Or LUBA 291 (1992).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** In amending its acknowledged zoning ordinance to add a broad definition of a "utility facility" and to allow utility facilities in all zoning districts, without any express limitation on the size or scale of such facilities, a local government must adopt findings identifying and addressing relevant comprehensive plan and statewide planning goal requirements, including Goals 11 and 14 (which preclude urban levels of facilities and development on rural lands). *Parmenter v. Wallowa County*, 21 Or LUBA 490 (1991).

**30.2.3 Zoning Ordinances – Amendment – Text Amendment: Standards.** Where there is an apparent conflict between a plan provision and an amended code provision, the city must explain in its findings why the code amendment does not conflict with the plan provision. *Nicolai v. City of Portland*, 19 Or LUBA 142 (1990).